

Message Text

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ACTION ARA-10

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R 202158Z JUN 75

FM AMEMBASSY QUITO

TO SECSTATE WASHDC 6056

INFO AMEMBASSY BOGOTA

AMCONSUL GUAYAQUIL

C O N F I D E N T I A L SECTION 1 OF 2 QUITO 4436

DEPT ALSO FOR AID; BOGOTA FOR AID/RLA; GUAYAQUIL FOR DEWITT ONLY

E.O. 11652: GDS

TAGS: AFSP, AMGT, PDIP, EC

SUBJ: SOCIAL SECURITY BENEFITS FOR ECUADOREAN FSL'S

REF: QUITO 4092

1. SUMMARY: ECUADOR'S SOCIAL SECURITY INSTITUTE (IESS) HAS SENT 3 NOTICES OF JUDICIAL PROCEEDING TO AID DIRECTOR IN EFFORT TO COLLECT EMPLOYER CONTRIBUTIONS FOR SOCIAL SECURITY BENEFITS ON BEHALF OF FORMER AID EMPLOYEE, AND FOREIGN OFFICE HAS NOW STEPPED INTO THE ACT IN ORDER TO SPUR ACTION. MISSION REVIEW INDICATES 3 BASIC PROBLEMS: A) HOW TO DEAL WITH "JUDICIAL PROCEEDING" IN THE CASE AT HAND; B) IMPLICATIONS OF THE SUIT FOR AID'S OTHER ECUADOREAN EMPLOYEES, VIRTUALLY NONE OF WHOM HAVE RETIREMENT BENEFITS FOR THE 11-YEAR PERIOD 1957-1968; AND C) IS IT LEGAL UNDER THE TERMS OF THE VIENNA CONVENTION ON DIPLOMATIC INTERCOURSE (SPECIFICALLY ARTICLE 33 PARA 3) FOR HOST COUNTRY EMPLOYEES OF THE USG TO BE COVERED FOR SOCIAL SECURITY/RETIREMENT PURPOSES BY US CIVIL SERVICE RETIRMENT PROGRAMS? RESOLUTION OF THESE PROBLEMS IS BEYOND THE EXPERTISE OF THIS MISSION. THE URGENCY WITH WHICH THE THREAT OF LEGAL ACTION (INCLUDING POSSIBLE PHYSICAL SEIZURE OF AID PROPERTY) FACES US LEADS US TO ASK FOR THE DETAIL OF EXPERTS FROM WASHINGTON VERSED IN THESE SORTS OF LEGAL

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QUESTIONS, PERSONNEL AND ADMINISTRATIVE QUESTIONS, AND

EMPLOYEE BENEFITS QUESTIONS RAISED BELOW. END SUMMARY.

2. IN EARLY 1973, A FORMER USAID EMPLOYEE, CARLOS GERARDO VASQUEZ CHIRIBOGA, APPLIED TO THE ECUADOREAN SOCIAL SECURITY INSTITUTE (IESS) FOR RETIREMENT BENEFITS. HIS LENGTH OF SERVICE INCLUDED THE PERIOD 1962-1968, DURING WHICH HE HAD WORKED FOR USAID. FOR REASONS OUTLINED BELOW, NO PAYMENTS HAD BEEN MADE BY USAID OR HIM TO THE IESS TO PROVIDE FOR RETIREMENT (OR OTHER) BENEFITS UNDER ECUADOREAN SOCIAL SECURITY. ON AUGUST 14, 1973, IESS NOTIFIED USAID THAT A CLAIM HAD BEEN SUBMITTED FOR THE PERIOD VASQUEZ WAS NOT ENROLLED IN IESS. USAID REPLIED ON SEPT 26, 1973, ATTEMPTING TO SHOW THAT IT WAS THE SUCCESSOR AGENCY TO THE INSTITUTE OF INTER-AMERICAN AFFAIRS (WHICH HAD BEEN EXONERATED FROM ECUADOREAN SOCIAL SECURITY REQUIREMENTS IN 1957), AND WAS THEREFORE EXEMPT FROM ENROLLING ITS EMPLOYEES IN IESS. THERE THEN ENSUED A LENGTHY EXCHANGE OF DOCUMENTATION IN WHICH USAID TRIED TO PROVE THAT IT WAS ENTITLED TO THE EXONERATION THAT HAD BEEN GIVEN TO THE INSTITUTE OF INTER-AMERICAN AFFAIRS.

3. THIS CORRESPONDENCE CLIMAXED WITH A NOTE FROM THE FOREIGN MINISTRY DATED MAY 22, 1975, IN WHICH THE MINISTRY RELAYED IESS' FINDINGS THAT USAID OWED THE BACK PAYMENTS, INTEREST, AND FINE IN THE VASQUEZ CASE; THAT THE IESS APPEALS PROCESS HAD BEEN EXHAUSTED; AND THAT A GOE SUPREME DECREE OF 1966 PROHIBITS THE IESS FROM REMITTING PAYMENT OF INTEREST AND FINES IMPOSED ON DELINQUENT ACCOUNTS (I.E., PROHIBITS IESS FROM EXONERATING USAID FROM LIABILITY FOR SUCH PAYMENTS).

4. ON JUNE 10, 1975, USAID DIRECTOR HARRY ACKERMAN WAS SENT A COPY OF NOTICE OF JUDICIAL PROCEEDING WHICH WAS INITIATED AGAINST HIM THAT DAY (REFTEL). PAYMENT WAS REQUESTED WITHIN THREE DAYS FROM RECEIPT OF THE NOTICE, FAILING WHICH SEIZURE OF PROPERTY WAS THREATENED. IESS HAS, ON ONE PAST OCCASION, PHYSICALLY SEIZED U.S. PROPERTY IN ORDER TO FORCE COLLECTION OF ALLEGED DEBTS.

5. BACKGROUND. ON MAY 1, 1957, THE ECUADOREAN NATIONAL CONFIDENTIAL

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INSTITUTE OF SOCIAL WELFARE (FORERUNNER OF THE IESS) EXEMPTED AID'S PREDECESSOR IN ECUADOR (THE INSTITUTE OF INTER-AMERICAN AFFAIRS) FROM THE REQUIREMENT TO ENROLL ITS ECUADOREAN EMPLOYEES IN THE ECUADOREAN SOCIAL SECURITY SYSTEM AND MAKE EMPLOYER CONTRIBUTIONS ON THEIR BEHALF. THIS ACTION WAS TAKEN IN EXPLICIT RECOGNITION OF OUR CLASSIFICATION OF THESE EMPLOYEES AS "LOCAL EMPLOYEES OF THE FOREIGN SERVICE, DEPARTMENT OF STATE" ENTITLED

TO USG-PROVIDED SOCIAL SECURITY, MEDICAL, AND RETIREMENT BENEFITS, AND THE CHANGE WAS APPARENTLY REQUESTED BY THE US MISSION IN ECUADOR. THE AMERICAN AMBASSADOR CONFIRMED THESE ARRANGEMENTS IN A LETTER TO THE NATIONAL INSTITUTE OF SOCIAL WELFARE DATED MAY 31, 1957. IT WAS NOT, HOWEVER, UNTIL NOVEMBER 3, 1968 THAT USAID'S ECUADOREAN EMPLOYEES WERE ENROLLED IN THE US CIVIL SERVICE RETIRMENT SYSTEM (USCSRS).

6. ON APRIL 17, 1962, THE US AND GOE SIGNED AN AGREEMENT ON ECONOMIC, TECHNICAL, AND RELATED ASSISTANCE (TIAS 5003) WHICH STATED IN ARTICLE IV(B) "ALL PERSONS, EXCEPT CITIZENS OR PERMANENT RESIDENTS OF ECUADOR...SHALL BE EXEMPT FROM INCOME AND SOCIAL SECURITY TAXES LEVIED UNDER THE LAWS OF ECUADOR..." ACCORDING TO GOE FOREIGN MINISTRY LEGAL ADVISER VELASCO, THE IESS APPEARS TO INTERPRET THIS SECTION AS ABROGATING THE 1957 EXONERATION, AND IMPLYING THAT ECUADOREAN CITIZEN EMPLOYEES SHALL BE COVERED UNDERPROVISIONS OF ECUADOREAN LAW RELATING TO SOCIAL SECURITY.

7. IT IS NOT CLEAR WHY USAID'S ECUADOREAN EMPLOYEES WERE REMOVED FROM ECUADOREAN SOCIAL SECURITY COVERAGE IN 1957 IF THEY WERE NOT IMMEDIATELY TO BE INSCRIBED IN THE USCSRS; NOR WHY IT WAS NOT UNTIL 1968 (ELEVEN YEARS LATER) THAT SOCIAL SECURITY, MEDICAL, AND RETIREMENT BENEFITS WERE FINALLY PROVIDED TO THEM. THE IMPORTANT FACT IS THAT USAID NOW HAS A NUMBER OF EMPLOYEES WITH NEARLY 20 YEARS' SERVICE WHO HAVE ANNUITY BENEFITS FOR ONLY THE LAST 7 YEARS (DATING FROM THEIR INSCRIPTION INTO THE USCSRS IN 1968). MANY OF USAID'S MORE RECENT HIREES ARE NOT ENROLLED UNDER THE USCSRS BECAUSE THEY HOLD "INDEFINITE" APPOINTMENTS; THEY HAVE NO RIGHTS UNDER ECUADOREAN SOCIAL SECURITY BECAUSE USAID HAS NOT INSCRIBED ANY OF ITS EMPLOYEES
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IN THAT SYSTEM, IN ACCORDANCE WITH US MISSION PRACTICE.

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INFO OCT-01 ISO-00 FS-01 PER-01 CIAE-00 INR-07 NSAE-00 L-03

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FM AMEMBASSY QUITO

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C O N F I D E N T I A L SECTION 2 OF 2 QUITO 4436

8. PROBLEMS: A) DEALING WITH THE GOE ON THIS MATTER;
AND B) HANDLING THE ISSUE WITH OUR OWN ECUADOREAN
EMPLOYEES.

9. WITH RESPECT TO THE GOE, WE HAVE TOLD THE FOREIGN
MINISTRY, IN A FORMAL NOTE, THAT WE ARE CONSULTING WITH
WASHINGTON. IN A MEETING AT THE FOREIGN MINISTRY ON
JUNE 12TH, CHARGE HEMENWAY HANDED THE IESS NOTE TO USAID
DIRECTOR ACKERMAN BACK TO THE ACTING SUBSECRETARY FOR
FOREIGN RELATIONS, AND SAID WE DECLINE FURTHER DIRECT
COMMUNICATION WITH THE IESS ON THE MATTER. WE HAVE ASKED
THE FOREIGN MINISTRY TO INFORM IESS THAT FURTHER COMMUNI-
CATIONS SHOULD BE BETWEEN THE FOREIGN MINISTRY AND THE
EMBASSY.

10. AND IN A SESSION AT THE FOREIGNMINISTRY ON JUNE 18,
ADCM AND AID DIRECTOR ACKERMAN REITERATED THAT THE EMBASSY
WAS IN TOUCH WITH WASHINGTONFOR GUIDANCE, AND ASKED THAT
THE FOREIGN MINISTRY INTERCEDE TO ENSURE THAT THE IESS
TAKE NO ACTION WHICH COULD PREJUDICE AN AMICABLE RESOLU-
TION OF THE PROBLEM. ADCM SPECIFICALLY REMINDED FOREIGN
MINISTRY LEGAL ADVISER VELASCO THAT AID DIRECTOR ACKERMAN
ENJOYS DIPLOMATIC IMMUNITY, AND CAUTIONED AGAINSTHASTY
ACTS BY IESS. FOR THE GOE'S PART, VELASCO REMINDED US
THAT THE IESS HAS BEEN TRYING TO COLLECT ON BEHALF OF
VASQUEZ SINCE 1973, AND IESS' PATIENCE IS WEARING THIN.
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(WE HAVE SOME REASON TO BELIEVE THAT THERE IS ALSO SOME
OUTSIDE PRESSURE BEING APPLIED BY HIGH-RANKING MILITARY
OFFICERS ON THE IESS/FOREIGN MINISTRY IN THIS CASE.) IN
RESPONSE TO OUR ASSERTION THAT THE 1957 EXONERATION STILL
APPLIES, VELASCO INSISTED THAT THE 1962 US-GOE AGREEMENT
TERMINATED THE 1957 ARRANGEMENT.

11. WITH RESPECT TO THE VIENNA CONVENTION, VELASCO MAIN-

TAINED THAT ARTICLE 33 PARA 3 REQUIRES ALL ECUADOREAN EMPLOYEES OF THE US MISSION TO BE COVERED UNDER ECUADOREAN SOCIAL SECURITY. WE NOTE THAT THE DISCUSSION IN THE DEPARTMENT'S REPORT ON THE VIENNA CONFERENCE (DOS PUBLICATION 7289) SAYS "THE CONVENTION CONTAINS NO ARTICLE ON THE APPLICABILITY OF SOCIAL SECURITY PROVISIONS TO MEMBERS OF THE MISSION WHO ARE NATIONALS OF THE RECEIVING STATE (P. 19)." THE ECUADOREAN INTERPRETATION OF ARTICLE 33 PARA 3 CARRIES WITH IT IMPLICATIONS FOR STATE'S AND OTHER USG AGENCIES' ECUADOREAN EMPLOYEES, VIRTUALLY ALL OF WHOM ARE COVERED UNDER PROVISIONS OF THE USCSRS.

12. WITH RESPECT TO OUR LOCAL EMPLOYEES, THE ESSENTIAL CONSIDERATION (AND PROBLEM) IS THAT VIRTUALLY NONE OF USAID'S ECUADOREAN EMPLOYEES HAVE RETIREMENT COVERAGE FOR THE 1957-1968 PERIOD. SOME OF THEM KNOW THIS, AND THE REMAINDER ARE GRADUALLY BEGINNING TO FOCUS ON IT. VASQUEZ' IS THE FIRST SUCH CASE TO COME TO A HEAD, AND THERE WILL ALMOST CERTAINLY BE MORE IN THE PROXIMATE FUTURE AS EMPLOYEES WHO CAME WITH USAID WHEN IT WAS FIRST ESTABLISHED IN ECUADOR BEGIN TO REACH RETIREMENT AGE. FURTHER, INCREASING NUMBERS OF THEM ARE COMING AWARE THAT USAID'S DAYS IN ECUADOR ARE LIMITED, WHICH WILL NO DOUBT GIVE FURTHER IMPETUS TO EMPLOYEE UNEASE. CLAIMS MIGHT ALSO COME FROM AID RETIREES WHO RECEIVED NO BENEFITS FOR THE 1957-68 PERIOD. AN AID EMPLOYEE ORGANIZATION HAS BEGUN ASKING QUESTIONS, AND WHEN OUR ECUADOREAN EMPLOYEES LEARN OF THE MAGNITUDE OF THE NON-COVERAGE, IMAGINATION CAN BEST ANTICIPATE THEIR LIKELY REACTION.

13. RECOMMENDATION: WE DO NOT HAVE THE LEGAL OR TECHNICAL EXPERTISE IN QUITO TO HANDLE THE QUESTIONS POSED BY THE VASQUEZ CASE, OR THE IMPLICATIONS FOR OTHER USG LOCAL CONFIDENTIAL

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EMPLOYEES. REQUEST THE DETAIL TO QUITO OF EXPERTS FROM THE DEPARTMENT/AID WHO CAN HANDLE THE LEGAL, ADMINISTRATIVE, PERSONNEL, AND EMPLOYEE BENEFITS QUESTIONS SUGGESTED HEREIN. BECAUSE OF THE THREAT OF LEGAL PROCEEDINGS, AND SPECIFICALLY THE ECUADOREAN PRECEDENT OF PHYSICALLY SEIZING PROPERTY TO SETTLE CLAIMS, WE ATTACH SOME URGENCY TO THIS REQUEST.

14. QUESTIONS WASHINGTON MAY WISH TO CONSIDER IN THE CONTEXT OF THE ABOVE: A) THE LEGAL BASIS FOR NOT COVERING USG ECUADOREAN EMPLOYEES UNDER ECUADOREAN SOCIAL SECURITY PROGRAMS; B) THE IMPLICATIONS FOR OTHER USG AGENCIES' LOCAL EMPLOYEES OF THE ECUADOREAN ACTION (STATE'S LOCAL EMPLOYEES, FOR EXAMPLE, ARE COVERED UNDER USCSRS PROGRAMS); C) WHETHER CONTRIBUTIONS THAT HAVE BEEN MADE BY BOTH USG

AND LOCAL EMPLOYEES INTO USCSRS PROGRAMS CAN BE WITHDRAWN
TO "BUY INTO" IESS SOCIAL SECURITY; D) WHETHER THE USG
IS PREPARED TO NOT ONLY "BUY INTO" IESS, BUT ALSO PAY THE
INTEREST AND FINES WHICH IESS HAS ATTEMPTED TO EXTRACT
IN THE FULBRIGHT COMMISSION CASE (QUITO 4068); E) WHAT
PROBLEMS DO DISPARITIES IN THE ECUADOREAN AND US SYSTEMS
CAUSE (FOR EXAMPLE, THEIR MATERNITY AND SICK LEAVE PROVI-
SIONS ARE MORE GENEROUS THAN OUR OWN)?

15. PLEASE ADVISE ETA OF WASHINGTON ASSISTANCE.
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